IN THE HIGH COURT OF UTTARTANCHAL
AT NAINITAL
Criminal Misc. Application No. 588/2005

Azhar Mohammad s/o late Shri Mazhar
R/o 43- Gandhi Road, Dehradun.
…. Applicant

Versus

1. State of Uttaranchal
2. Saif Ali S/o Late Sammiullah, r/o 43 Gandhi Road,Dehradun.
3. Zishanullah, r/o 43-Gandhi Road ,Dehradun

….Opposite Party.

Hon'ble B.C. Kandpal, J

This petition has been filed Under Section 482 Cr.P.C by the petitioner for quashing order dated 30.6.2005 (Annexure No.1)passed by Judicial Magistrate II, Dehradun in Criminal Case No. 332/2005 State vs Azhar Mohd under Section 323/504 IPC.

Brief facts giving rise to this petition are that a First Information Report was lodged against the petitioner by respondents 2 and 3 namely Saif Ali and Zishanullah, on 7.7.2003 under Section 323.504 IPC. The petitioner moved an application before the court concerned stating therein that he is a public servant and the sanction of the government under Section 197 Cr.P.C was required and unless that sanction is there, no cognizance can be taken against the petitioner.

The application filed by the petitioner was rejected by the Judicial Magistrate observing that the criminal act was not committed during the official discharge of his duties by the petitioner therefore no sanction under Section 197 Cr.P.C wa necessary.

Feeling aggrieved against the impugned order dated 30.6.2005, the petitioner has filed the petition under Section 482 Cr.P.C before this Court.

Heard Sh B.P.Nautiyal,learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner has argued that the police authorities have falsely involved the petitioner with the collusion of respondents 2 and 3 and the criminal case cannot be proceeded against him without prior approval of the State Government.

I fail to appreciate the arguments advanced by the learned counsel for the petitioner .As per FIR, the petitioner hurled the abuse at the complainant and thereafter attacked one Saif Ali s/o Sammiullah resulting injuries on his head. The allegations in the First Information Report are that the petitioner thereafter threw the entire house hold goods of the complainant from the house.

The person who claims to be a government servant does not have any authority to abuse anyone or to involve himself in any criminal act and in case if he does so that does not mean to have been committed during the discharge of official duties.

I do not find any ground to interfere in the impugned order passed by the court below so far as to quash the proceedings pending before the court of Judicial Magistrate concerned

The contentions raised by the learned counsel for the petitioner relate to the facts which can be assessed by the trial court during the course of trial.

I do not find any flagrant injustice against the petitioner as well as there is no abuse of the process of the court.

I, therefore, do not find any justification to invoke the inherent jurisdiction under Section 482 Cr.PC to set aside the impugned order

Accordingly the petition is dismissed.

(B.C. Kandpal,J.)

8.9.2005
NBJ